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Taxpayer sponsors a single-employer defined benefit pension plan for its employees who are members of Union. The Plan states that a participant's normal retirement date is the first day of the month coincident with or next following the participant's attainment of his or her normal retirement age. Pursuant to then-existing Federal law, Taxpayer imposed a mandatory retirement age for pilots who participate in the Plan of age 60, which the Plan reflects as its normal retirement age. The Plan contains a provision for the permanent withholding of benefit payments that would otherwise be payable to participants who engage in "disqualifying employment," which is employment after a participant's attainment of normal retirement age which results in entitlement to credit for (i) at least 40 hours of service for a calendar month or (ii) at least one hour of service performed on each of eight or more days (or separate work shifts) in a calendar month, if the Plan has not for any purpose determined or used the actual hours of service required to be credited to the participant. Taxpayer represents that this provision has

been in the Plan since its inception, and was also in its predecessor plan since its restatement as of January 1, 2001.

Congress enacted the Fair Treatment for Experienced Pilots Act of 2007, which increased the mandatory retirement age for pilots from 60 to 65 years of age.

Accordingly, the Taxpayer adjusted its mandatory retirement age for pilots to 65. The Plan's normal retirement age, however, remains 60 years old. Pursuant to the Income Tax Regulations ("Treas. Reg."), a participant's accrued benefit is immediately distributable prior to the later of the date the participant attains normal retirement age and the date he or she reaches age 62. Further, Taxpayer provided notice of suspension of benefits to all employed pilots after their 60th birthdays.

Based on the facts and representations stated above, Taxpayer requests a ruling that:

1. The actuarial adjustment requirements of section 411(c)(3) of the Code and suspension of benefits rules of section 411(a)(3)(B) of the Code apply to the Plan, even though it is currently frozen.
2. In applying the suspension of benefits rules of section 411(a)(3)(B) of the Code to the Plan, the consent requirements of section 411(a)(11) of the Code are not applicable for purposes of determining whether a pilot participant is in "section 203(a)(3)(B) service."
3. If the rulings described in items 1 and 2 are issued, the Plan benefits of participants who are employed in "section 203(a)(3)(B) service" after the Plan's Normal Retirement Age and while their accrued benefits under the Plan are immediately distributable (prior to age 62, as provided in Treas. Reg. § 1.411(a)-11(c)(4) may be suspended in accordance to section 411(a)(3)(B) of the Code without actuarial adjustment.

Section 401(a)(7) of the Code provides that a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part satisfies the requirements of section 411 of the Code (relating to minimum vesting standards).

Section 401(a)(14) of the Code and Treas. Reg. § 1.401(a)-14(a) provide that, unless the participant otherwise elects, the payment of benefits under a plan to the participant must begin no later than the 60th day after the latest of the close of the plan year in which – (A) occurs the date on which the payment attains the earlier of age 65 or the normal retirement age specified under the plan; (B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan; or (c) the participant terminates his service with the employer.

Although section 401(a)(14) of the Code authorizes, in some cases, a delay in the commencement of benefits beyond the time a participant attains normal retirement age, that section does not authorize the forfeiture of such delayed benefits.

The general rule under section 411(a) of the Code states, in part, that a trust shall not constitute a qualified trust under section 401(a) of the Code unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in section 411(a)(8)), and, for defined benefit plans, satisfies the requirements of section 411(b)(1).

Section 411(a) of the Code and Treas. Reg. §§ 1.411(a)-1 and 1.411(a)-4(a) require that certain rights in an employee's accrued benefit be nonforfeitable. Once such an employee's right becomes nonforfeitable (i.e., it is an unconditional right), then, generally, it may not be forfeited.

Section 411(a)(3) of the Code provides for limited exceptions to the requirement of nonforfeiture.

Section 411(a)(3)(B) of the Code and its counterpart, section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), state that a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits (i) in the case of a plan other than a multiemployer plan, by the employer who maintains the plan under which such benefits were being paid; and (ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced. The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed."

DOL Reg. 2530.203-3(c) defines "section 203(a)(3)(B) service" and clarifies that for a non-multiemployer plan, section 203(a)(3)(B) service can occur not only subsequent to the commencement of payment of benefits, but also where payment of benefits would have continued had the employee not remained in or returned to employment after normal retirement age.

DOL Reg. 2530.203-3(b) states, in part, that no payment shall be withheld by a plan pursuant to this section (suspension upon reemployment) unless the plan notifies the employee by personal delivery or first class mail during the first calendar month or payroll period in which the plan withholds payments that his benefits are suspended.

Section 411(c)(3) of the Code states that for any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits)

commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

Section 411(a)(11) of the Code states that if the present value of any nonforfeitable accrued benefit exceeds \$5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

Treas. Reg. § 1.411(c)-1(f)(1) states that no adjustment to an accrued benefit is required on account of any suspension of benefits if such suspension is permitted under section 203(a)(3)(B) of ERISA. Treas. Reg. § 1.411(c)-1(f)(2) states that no actuarial adjustment to an accrued benefit is required on account of employment after normal retirement age. For example, if a plan with a normal retirement age of 65 provides a benefit of \$400 a month payable at age 65 the same \$400 benefit (with no upward adjustment) could be paid to an employee who retires at age 68.

Treas. Reg. § 1.411(a)-11(c)(4) provides that participant consent is required for any distribution while the accrued benefit is "immediately distributable," defined as prior to the later of the time a participant has attained normal retirement age or age 62.

With respect to your first requested ruling, the requirement under section 411(c)(3) of the Code that a participant's benefit must be actuarially adjusted if the benefit is calculated as other than an annual benefit commencing at normal retirement age applies whether or not the plan is frozen, as this section relates to amounts already accrued. However, an exception to this rule is provided in section 411(a)(3)(B) of the Code that allows suspension of payments of the accrued benefit upon reemployment of a retiree. The Plan contains a provision stating that it can suspend the payment of benefits to a participant that is reemployed with the employer. Thus, as long as the Taxpayer properly provides notice of suspended benefits to the participant, which was done here, the benefits may be suspended without any actuarial adjustment.

With respect to your second requested ruling, the consent requirements of section 411(a) of the Code are not applicable for purposes of determining whether a Participant is reemployed with the employer and thus performing "section 203(a)(3)(B) service." Whether or not a participant consents to begin receiving benefits under the plan is not a factor as to whether or not the Participant is reemployed. The consent requirement of section 411(a)(11) of the Code does not have any effect on whether or not the employer may suspend the payment of a participant's benefit without actuarial adjustment.

With respect to your third requested ruling, Treas. Reg. § 1.411(c)-1(f) states that a plan does not have to provide an actuarial adjustment to a participant's accrued benefit if that participant continues to be employed by the company after normal retirement age. Because the adjustment is not required, it follows that not making that adjustment does

not constitute a forfeiture of benefits. A participant under the Plan who is reemployed with the Taxpayer in "section 203(a)(3)(B) service" and his or her accrued benefit is immediately distributable under the Plan may have their benefits suspended while reemployed without any actuarial adjustment, as long as the Plan allows for such a suspension, and that, as here, notice is provided to the participant prior to the suspension of the benefit payments.

Therefore, the IRS rules that:

1. The actuarial adjustment requirements of section 411(c)(3) of the Code and suspension of benefits rules for reemployed participants pursuant to section 411(a)(3)(B) of the Code apply to the Plan. These requirements apply despite the fact that the Plan is currently frozen.
2. In applying the suspension of benefits rules of section 411(a)(3)(B) of the Code to the Plan, the consent requirements of section 411(a)(11) of the Code are not applicable for purposes of determining whether a Qualified Participant is in "section 203(a)(3)(B) service."
3. The Plan benefits of participants who are employed in "section 203(a)(3)(B) service" after the Plan's Normal Retirement Age and while their accrued benefits under the Plan are immediately distributable (prior to age 62), as provided in Treas. Reg. § 1.411(a)-11(c)(4) may be suspended in accordance to section 411(a)(3)(B) of the Code without any actuarial adjustment.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jason E. Levine
Senior Tax Law Specialist
Qualified Plans Branch 4
(Tax Exempt and Governmental Entities)